



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

July 14, 2015
1507-VU-07
Exhibit 1

Petition Numbers: 1507-VU-07

Subject Site Location: 4540 East 146th Street

Petitioner: Crown Castle by Bingham Greenebaum Doll LLP

Requests: The petitioner is requesting approval of a Variance of Use to allow a new Wireless Communication Service Facility in the Single-Family Low Density District (SF3) District (Chapter 13: Use Table).

Current Zoning: Single-Family 3

Current Land Use: Utility Substation

Approximate Acreage: 13.06 acres+/-

Exhibits:

1. Staff Report
2. Location Map
3. Application
4. Construction Plans

Staff Reviewer: Kevin M. Todd, AICP

PETITION HISTORY

This petition will receive a public hearing at the July 14, 2015, Board of Zoning Appeals meeting

ANALYSIS

Location: The subject property is approximately 13.06 acres +/- in size is located at 4540 East 146th Street (the "Property"). The Property is zoned Single Family-3 (SF-3) and is used as a power sub-station. Adjacent property to the north and east is zoned Bridgewater PUD. Property to the west is zoned Commerce Center PUD. Property to the south (across 146th Street) is within the City of Carmel's jurisdiction, and is currently vacant.

Variance Requests: Wireless Communication Service Facilities are not permitted by-right within the SF-3 zoning classification. The request is to allow a new Wireless Communication Service Facility on the Property.



Project Description: In order to provide upgrade existing wireless communication equipment on the property, a new tower is necessary. The site currently contains two (2) 101' wood towers. The proposal is to install a new steel 155' monopole tower on the site that would replace the two existing wood towers. The new tower would be able to accommodate additional service providers, as well as new antenna technology. Access to the Property would be from an existing access drive off of 146th Street. The proposal includes two new equipment buildings under 200 square feet each. The wireless communication lease area is located north of the power sub-station equipment. If the use is approved through this variance request, the new tower would require Development Plan review and approval by the Advisory Plan Commission.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies this Property within the "Suburban Residential" ¹ land use classification. The Comprehensive Plan does not address wireless communication facilities or other utility facilities.

PROCEDURAL

Public Notice: The Board of Zoning Appeals (the "BZA") is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the July 14, 2015, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Conditions: The UDO² and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Development Plan Approval: If the Board of Zoning Appeals approves the requested Variance of Use, then the use and site would be required to obtain Development Plan approval by the Advisory Plan Commission.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO³ requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy

¹ Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

² Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

³ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



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of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved under Ind. Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance of use arises from some condition particular to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought; and,
5. The approval does not interfere substantially with the comprehensive plan.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

DEPARTMENT COMMENTS

Recommended Findings for Approval:

If the Board is inclined to APPROVE the variances, then the Department recommends approving the petition with the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that allowing a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. The site currently contains two (2) existing cell towers and a power



sub-station, and there is no evidence of harm to the community as a result of those facilities. Adding a new tower with upgraded equipment to replace the two (2) existing towers would increase cell/wireless service in this area of Westfield.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The pole is on a property that already is developed as an intense power sub-station. Adding a monopole wireless tower to replace two (2) existing towers will likely blend very well with the surrounding facilities.

3. The need for the variance of use arises from some condition particular to the property involved:

Finding: The subject property is currently heavily used for utility facilities and equipment. Continuing that use on this site with a monopole that would replace two other towers aligns with the current property conditions. Any other permitted SF-3 use would likely not find the utility facilities compatible neighbors.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts. Current wireless facilities on the property are older and cannot sustain upgraded antenna equipment, which would improve wireless coverage in this area of Westfield.

5. The approval does not interfere substantially with the comprehensive plan:

Finding: The Comprehensive Plan does not address wireless communication facilities. The proposal neither frustrates nor further advances the vision of the Comprehensive Plan.

Recommended Findings for Denial:

If the Board is inclined to DENY the variances, then the Department recommends approving the petition with the following conditions and findings:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:



Finding: It is unlikely that allowing a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. The site currently contains two (2) existing cell towers and a power sub-station, and there is no evidence of harm to the community as a result of those facilities. Adding a new tower with upgraded equipment to replace the two (2) existing towers would increase cell/wireless service in this area of Westfield.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: The use and value of adjacent property may be affected in a substantially adverse manner. Perceptions of living near a wireless communications tower may negatively impact the value of property in the nearby home markets.

3. The need for the variance of use arises from some condition particular to the property involved:

Finding: It is unlikely that the property will redevelop in a manner that is consistent with permitted SF-3 uses.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts. The property is heavily used for utility facility use. Any other permitted SF-3 use would likely not find the utility facilities compatible neighbors.

5. The approval does not interfere substantially with the comprehensive plan:

Finding: The Comprehensive Plan does not address wireless communication facilities. The proposal neither frustrates nor further advances the vision of the Comprehensive Plan.